

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Eddie Mack Stewart, Jr.,)
)
)
Plaintiff,)
)
) Civil Action No.: 1:13-cv-01960-JMC
v.)
)
)
Guns and Ammo,)
)
)
Defendant.)
)

ORDER

This matter is before the court for review of the magistrate judge's Report and Recommendation ("Report"), [ECF No. 10], filed August 26, 2013, recommending that the Complaint in the above-captioned case be dismissed *without prejudice* and without issuance and service of process. Plaintiff brought this action seeking relief pursuant to Title 42 U.S.C. § 1983. The Report sets forth in detail the relevant facts and legal standards on these matters which the court incorporates herein without a recitation.

The magistrate judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the magistrate judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report [ECF No. 10-7]. Plaintiff timely filed objections to the Report on September 3, 2013. [ECF No. 12].

In his objections, Plaintiff requests clarification about the effect of his lawsuit being dismissed without prejudice. The court instructs Plaintiff that his lawsuit was dismissed because

he has not alleged a claim that is properly within the jurisdiction of the federal court. Instead, the magistrate judge has determined that Plaintiff has alleged a claim for personal injury based on state law and is therefore appropriate for state court. [See Report and Recommendation, ECF No. 10]. Since the order dismissed the action without prejudice, Plaintiff is allowed to reconsider the allegations of his complaint to determine whether he can allege a claim based on federal law or allege a state law claim where there is diversity in the citizenship of the parties so that he can invoke the jurisdiction of the federal court.

After a thorough review of the Report and Recommendation and the record in this case, the court **ACCEPTS** the magistrate judge's Report and Recommendation. [ECF No. 10]. It is therefore **ORDERED** that Plaintiff's Complaint [ECF No. 1] is **DENIED** and this case is **DISMISSED** *without prejudice* and without service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. Michelle Childs".

United States District Judge

December 27, 2013
Greenville, South Carolina